

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 10-2217 JB

JOSE VELAZCO-BARRAZA,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on a competency hearing held September 16, 2011 pursuant to 18 U.S.C. § 4241. The primary issue is whether Defendant Jose Velazco-Barraza is mentally competent to stand trial. Because the Court concludes that Velazco-Barraza understands the nature and consequences of the proceedings against him and that he will be able to assist in his defense, the Court finds that Velazco-Barraza is mentally competent to stand trial.

18 U.S.C. § 4241(a) provides that, once the issue of legal competence is raised:

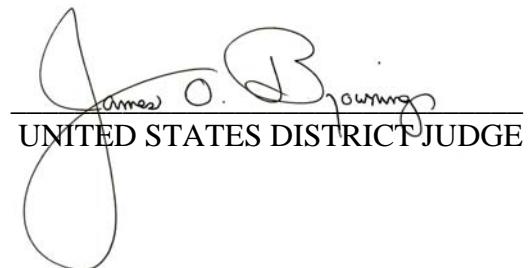
[T]he Court . . . shall order . . . a hearing . . . if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

18 U.S.C. § 4241(a). Before the date of the hearing, the Court may order that a psychiatric or psychological examination of the defendant be conducted pursuant to 18 U.S.C. § 4247(b). See 18 U.S.C. § 4241(b). The Court found, in its prior Memorandum Opinion and Order, filed September 21, 2010 (Doc. 24)(“MOO”), that a psychological report from Dr. Sam Roll, Ph.D., P.A. established, by a preponderance of the evidence, that Velazco-Barraza was then suffering from a mental disease or defect rendering him mentally incompetent. See MOO at 4. The Court committed Velazco-

Barraza to the Attorney General's custody and ordered that psychological reports be submitted sixty, ninety, and one-hundred-twenty days after he was taken into custody. See MOO at 7.

At the September 16, 2011 competency hearing, the Court had before it a report from the evaluating doctors at the Butner, North Carolina Federal Medical Center. See Transcript of Hearing at 4:23-25 (September 26, 2011)(Court)(“Tr.”).¹ The doctors reported that Velazco-Barraza is on proper medications and that he is competent, in that he understands the nature of the legal proceedings and can assist his attorney at trial. See Tr. at 4:23-5:5 (Court). Velazco-Barraza’s attorney, Federal Public Defender Stephen McCue, stipulated to the report and the report’s finding that Velazco-Barraza is competent. See Tr. at 4:6-15 (McCue). Plaintiff United States of America also stipulated to the report from Butner as the record in the hearing. See Tr. at 4:16-22 (Court, Torrez). The Court finds that Velazco-Barraza is sufficiently able to understand the nature and consequences of the proceedings against him and that he is sufficiently able to assist properly in his defense.

IT IS ORDERED that the Defendant Jose Velazco-Barraza is mentally competent to stand trial.



James O. Bowring
UNITED STATES DISTRICT JUDGE

¹The Court’s citations to the transcript of the hearing refer to the court reporter’s original, unedited version. Any finalized transcript may contain slightly different page and/or line numbers.

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